

CHAPTER 1064

DEBTS OWED TO PUBLIC AGENCIES — SETOFF PROCEDURES

H.F. 2565

AN ACT relating to the setoff procedures used by public agencies and including effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. [Section 8A.323, subsection 5](#), Code 2020, is amended to read as follows:

5. Any fine that remains unpaid upon becoming delinquent may be collected by the department of revenue pursuant to the setoff procedures provided for in [section 8A.504 421.65](#). For purposes of [this subsection](#), a fine becomes delinquent if it has not been paid within thirty days of the date of the issuance of the parking citation, unless a written request for a hearing is filed as provided pursuant to the rules of the department of revenue. If an appeal is filed and the citation is upheld, the fine becomes delinquent ten days after the issuance of the final decision on the appeal or thirty-one days after the date of the issuance of the parking citation, whichever is later.

Sec. 2. [Section 8A.502, subsection 2](#), Code 2020, is amended by striking the subsection.

Sec. 3. [Section 96.11, subsection 16](#), Code 2020, is amended to read as follows:

16. *Reimbursement of setoff costs.* The department shall include in the amount set off in accordance with [section 8A.504 421.65](#), for the collection of an overpayment created pursuant to [section 96.3, subsection 7](#), or [section 96.16, subsection 4](#), an additional amount for the reimbursement of setoff costs incurred by the department of ~~administrative services~~ revenue.

Sec. 4. [Section 99D.2, subsection 3](#), Code 2020, is amended to read as follows:

3. “*Claimant agency*” means a public agency as defined in [section 8A.504 421.65, subsection 1](#), or the state court administrator as defined in [section 602.1101](#).

Sec. 5. [Section 99D.28, subsection 2](#), Code 2020, is amended to read as follows:

2. The licensee is authorized and directed to withhold any winnings of a debtor which are paid out directly by the licensee subject to the lien created by [this section](#) and provide notice of such withholding to the winner when the winner appears and claims winnings in person. The licensee shall pay the funds over to the collection entity which administers the setoff program pursuant to [section 8A.504 421.65](#).

Sec. 6. [Section 99F.1, subsection 5](#), Code 2020, is amended to read as follows:

5. “*Claimant agency*” means a public agency as defined in [section 8A.504 421.65, subsection 1](#), or the state court administrator as defined in [section 602.1101](#).

Sec. 7. [Section 99F.19, subsection 2](#), Code 2020, is amended to read as follows:

2. The licensee is authorized and directed to withhold any winnings of a debtor which are paid out directly by the licensee subject to the lien created by [this section](#) and provide notice of such withholding to the winner when the winner appears and claims winnings in person. The licensee shall pay the funds over to the collection entity which administers the setoff program pursuant to [section 8A.504 421.65](#).

Sec. 8. [Section 99G.38, subsection 3](#), Code 2020, is amended to read as follows:

3. The state of Iowa offset program, as provided in [section 8A.504 421.65](#), shall be available to the authority to facilitate receipt of funds owed to the authority.

Sec. 9. [Section 217.34](#), Code 2020, is amended to read as follows:

217.34 Debt setoff.

The investigations division of the department of inspections and appeals and the department of human services shall provide assistance to set off against a person's or provider's income tax refund or rebate any debt which has accrued through written

contract, nonpayment of premiums pursuant to [section 249A.3, subsection 2](#), paragraph “a”, subparagraph (1), subrogation, departmental recoupment procedures, or court judgment and which is in the form of a liquidated sum due and owing the department of human services. The department of inspections and appeals, with approval of the department of human services, shall adopt rules under [chapter 17A](#) necessary to assist the department of ~~administrative services revenue~~ in the implementation of the setoff under [section 8A.504 421.65](#) in regard to money owed to the state for public assistance overpayments or nonpayment of premiums as specified in [this section](#). The department of human services shall adopt rules under [chapter 17A](#) necessary to assist the department of ~~administrative services revenue~~ in the implementation of the setoff under [section 8A.504 421.65](#), in regard to collections by the child support recovery unit and the foster care recovery unit.

Sec. 10. [Section 234.8](#), Code 2020, is amended to read as follows:

234.8 Fees for child welfare services.

The department of human services may charge a fee for child welfare services to a person liable for the cost of the services. The fee shall not exceed the reasonable cost of the services. The fee shall be based upon the person’s ability to pay and consideration of the fee’s impact upon the liable person’s family and the goals identified in the case permanency plan. The department may assess the liable person for the fee and the means of recovery shall include a setoff against an amount owed by a state agency to the person assessed pursuant to [section 8A.504 421.65](#). In addition the department may establish an administrative process to recover the assessment through automatic income withholding. The department shall adopt rules pursuant to [chapter 17A](#) to implement the provisions of [this section](#). [This section](#) does not apply to court-ordered services provided to juveniles which are a charge upon the state pursuant to [section 232.141](#) and services for which the department has established a support obligation pursuant to [section 234.39](#).

Sec. 11. [Section 252B.5, subsection 4](#), Code 2020, is amended to read as follows:

4. Assistance to set off against a debtor’s income tax refund or rebate any support debt, which is assigned to the department of human services or which the child support recovery unit is attempting to collect on behalf of any individual not eligible as a public assistance recipient, which has accrued through written contract, subrogation, or court judgment, and which is in the form of a liquidated sum due and owing for the care, support, or maintenance of a child. Unless the periodic payment plan provisions for a retroactive modification pursuant to [section 598.21C](#) apply, the entire amount of a judgment for accrued support, notwithstanding compliance with a periodic payment plan or regardless of the date of entry of the judgment, is due and owing as of the date of entry of the judgment and is delinquent for the purposes of setoff, including for setoff against a debtor’s federal income tax refund or other federal nontax payment. The department of human services shall adopt rules pursuant to [chapter 17A](#) necessary to assist the department of ~~administrative services revenue~~ in the implementation of the child support setoff as established under [section 8A.504 421.65](#).

Sec. 12. [Section 261.37, subsection 7](#), Code 2020, is amended to read as follows:

7. To establish an effective system for the collection of delinquent loans, including the adoption of an agreement with the department of ~~administrative services revenue~~ to set off against a defaulter’s income tax refund or rebate the amount that is due because of a default on a loan made under [this subchapter](#). The commission shall adopt rules under [chapter 17A](#) necessary to assist the department of ~~administrative services revenue~~ in the implementation of the student loan setoff program as established under [section 8A.504 421.65](#). The commission shall apply administrative wage garnishment procedures authorized under the federal Higher Education Act of 1965, as amended and codified in 20 U.S.C. §1071 et seq., for all delinquent loans, including loans authorized under [section 261.38](#), when a defaulter who is financially capable of paying fails to voluntarily enter into a reasonable payment agreement. In no case shall the commission garnish more than the amount authorized by federal law for all loans being collected by the commission, including those authorized under [section 261.38](#).

Sec. 13. [Section 321.11A, subsection 1](#), Code 2020, is amended to read as follows:

1. Notwithstanding [section 321.11](#), the department, upon request, shall provide personal information that identifies a person by the social security number of the person to the following:

a. The department of revenue for the ~~purpose~~ purposes of collecting debt and administering the setoff program pursuant to [section 421.65](#).

b. The judicial branch for the purpose of collecting court debt pursuant to [section 602.8107](#).

~~c. The department of administrative services for the purpose of administering the setoff program pursuant to [section 8A.504](#).~~

Sec. 14. [Section 321.31, subsection 1](#), paragraph c, Code 2020, is amended to read as follows:

c. The director shall maintain a records system of delinquent accounts owed to the state using information provided through the computerized data bank established in [section 421.17](#). The department and county treasurers shall use the information maintained in the records system to determine if applicants for renewal of registration have delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state as provided pursuant to [section 8A.504](#) [421.65](#). The director, ~~the director of the department of administrative services~~, and the director of revenue shall establish procedures for updating the delinquent accounts records to add and remove accounts, as applicable.

Sec. 15. [Section 321.40, subsection 6](#), paragraph a, Code 2020, is amended to read as follows:

a. The department or the county treasurer shall refuse to renew the registration of a vehicle registered to the applicant if the department or the county treasurer knows that the applicant has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information provided pursuant to [sections 8A.504 and 421.17](#) and 421.65. An applicant may contest this action by initiating a contested case proceeding with the agency that referred the debt for collection pursuant to [section 8A.504](#) [421.65](#). The department of revenue and the department of transportation shall notify the county treasurers through the distributed teleprocessing network of persons who owe such a delinquent account, charge, fee, loan, taxes, or other indebtedness.

Sec. 16. **NEW SECTION. 421.65 Setoff procedures.**

1. *Definitions.* As used in [this section](#), unless the context otherwise requires:

a. “*Obligor*” means a person, not including a public agency, who has been determined to owe a qualifying debt.

b. “*Public agency*” means a board, commission, department, including the department of revenue, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa comprehensive annual financial report, or a political subdivision of the state, or an office or unit of a political subdivision. “*Public agency*” does include the clerk of the district court as it relates to the collection of a qualifying debt. “*Public agency*” does not include the general assembly or office of the governor.

c. “*Public payment*” means any claim a public agency owes to an obligor.

d. “*Qualifying debt*” means any of the following:

(1) Any debt, which is assigned to the department of human services, or which is owed to the department of human services for unpaid premiums under [section 249A.3, subsection 2](#), paragraph “a”, subparagraph (1), or which the child support recovery unit is otherwise attempting to collect, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services.

(2) Any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court.

(3) Any liquidated sum certain, owing, and payable to a public agency, with respect to which the public agency has provided the obligor an opportunity to protest or challenge the sum in a manner in compliance with applicable law and due process, and which has been

determined as owing through the challenge or protest, or for which the time period provided by the public agency to challenge or protest has expired.

2. *Setoff procedure.* The department shall establish and maintain a procedure to set off against each public payment any qualifying debt the obligor owes to a public agency. The procedure shall only apply when the department determines, in its discretion, it is feasible and complies with applicable law. The procedure shall meet the following conditions:

a. Each participating public agency shall obtain and forward to the department the full name and social security number of each obligor, or similar identifying information for an obligor who is not a natural person, and any other information concerning the person the department shall require. The department shall cooperate with public agencies in the exchange of information relevant to identifying public payments and qualifying debt that may be subject to setoff. However, the department shall provide only relevant information required by a public agency. The information shall be held in confidence and used for the purpose of setoff only. [Section 422.72, subsection 1](#), does not apply to this paragraph.

b. Each participating public agency shall, at least annually, certify to the department the information required by paragraph “a”, the amount of each obligor’s liability to and the amount of each claim on the public agency, and that all liabilities submitted constitute qualifying debt. The department may, by rule, require more frequent certifications or certifications of additional information about the qualifying debt or the obligor. The department may, in its discretion, review the accuracy of any certification made pursuant to this paragraph.

c. The department may, by rule, establish a minimum amount of liabilities and claims that may be setoff.

d. Upon submission of an allegation of liability by a public agency, the department shall notify the public agency whether the obligor is entitled to a public payment, and, if so entitled, shall notify the public agency of the amount of the obligor’s entitlement and last address known to the department. [Section 422.72, subsection 1](#), does not apply to this paragraph.

e. Upon notice of entitlement to a public payment, the department shall send written notification to the obligor and any known co-payee of the public payment. The notification shall contain the public agency’s assertion of its rights to all or a portion of the payment and of the public agency’s entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the obligor’s opportunity to give written notice of intent to contest the setoff procedure or that the debt is a qualifying debt.

f. Upon the request of an obligor or a co-payee of the public payment received by the department within the time period provided in the written notification, and upon receipt of the full name and social security number of the co-payee, or similar identifying information of a co-payee who is not a natural person, the department shall notify the public agency that the public agency shall divide a jointly or commonly owned right to payment in the manner determined by the department. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

g. The department shall, after the department has sent the notice to the obligor provided in paragraph “e”, set off the amount last certified by the public agency as owed to the agency against the public payment. The department shall refund any balance of the payment to the obligor. The department shall periodically transfer amounts set off to the public agencies entitled to them, reduced by any fees charged for setoff. If an obligor gives written notice of intent to contest a setoff, the public agency shall hold a refund or rebate until final disposition of the challenge. Upon completion of the setoff, the department shall provide written notice of the completed setoff to the obligor and any co-payees of the payment subject to setoff.

h. The department’s existing right to credit against tax due or to become due under [section 422.73](#) is not to be impaired by a right granted to or a duty imposed upon the department by [this section](#). [This section](#) is not intended to impose upon the department any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under [section 422.73](#).

i. If the alleged liability is owing and payable to the clerk of the district court and setoff as provided in [this section](#) is sought, all of the following shall apply:

(1) The judicial branch shall prescribe procedures to permit an obligor to contest the amount of the obligor's liability to the clerk of the district court.

(2) The department shall, except for the procedures described in subparagraph (1), provide for any other applicable procedures concerning setoff as provided in [this subsection](#).

(3) Upon completion of the setoff, the department shall file, at least monthly, with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected. A separate written notice is not required.

3. Challenges to a setoff.

a. Challenges under [this section](#) may be initiated only by an obligor. The department's review of a challenge to a setoff is not subject to [chapter 17A](#).

b. The obligor challenging the setoff shall submit a written challenge in the manner provided in the notice described in [subsection 2](#), paragraph "e", within fifteen days of the date of the notice.

c. The department, upon receipt of a written challenge, shall provide written notice of the challenge to the public agency. The department shall review the information submitted by the public agency prior to the setoff and shall obtain additional information from the public agency if necessary to establish that the liability is a qualified debt, or to verify the identity of the obligor or the amount owed. The department shall set a time to occur within ten days of receipt of the challenge to review the relevant facts of the challenge with the obligor. An alternative time may be set at the request of the obligor. If the obligor does not participate in the review at the scheduled time and an alternative time is not requested and approved, the review shall take place without the obligor being present. Information in favor of the obligor and the public agency shall be considered in the review. Only a determination that the debt is not a qualified debt or a mistake of fact, including a mistake in the identity of the obligor, or a mistake in the amount owed, shall be considered as a reason to deny or modify the setoff.

d. If the department determines that a mistake of fact has occurred or that the liability submitted does not constitute a qualified debt, the public agency shall promptly return the setoff funds to the original payee or payees unless there is another qualifying debt available for setoff.

e. If the department finds no mistake of fact and that the liability is a qualified debt, the department shall provide a notice of that effect to the obligor and the public agency, and the public agency shall retain the funds subject to setoff.

f. The obligor shall have the right to file an action for wrongful setoff in district court within thirty days of the date of the notice to the obligor provided in paragraph "e", either in the county where the obligor is located or the county where the main office of the public agency is located. The defendant in such action shall be the public agency, with an additional copy of such petition to be served upon the office of the attorney general. Actions under [this section](#) are in equity and not actions at law and are an obligor's exclusive remedy to challenge any action arising from or related to [this section](#).

g. Recovery under [this subsection](#) is limited to restitution from the public agency of the amount that has been wrongfully setoff or obtained by the public agency.

h. A challenge under [this subsection](#) shall not be used to extend, toll, or reopen the statute of limitations to challenge or contest a qualified debt. Only mistakes of fact, failure of the public agency to comply with the provisions of [this section](#), or a liability that is not a qualified debt, shall constitute grounds for challenge under [this subsection](#).

4. *Priority.* In the case of multiple claims to payments filed under [this section](#), priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit, next priority shall be given to claims filed by the clerk of the district court, next priority shall be given to claims filed by the investigations division of the department of inspections and appeals, next priority shall be given to claims that will be deposited into the state general fund, and last priority shall be given to claims filed by other public agencies. In the case of multiple claims in which the priority is not otherwise provided by [this subsection](#), priority shall be determined in accordance with rules to be established by the department.

5. *Reciprocal agreements.* The director shall have the authority to enter into reciprocal agreements with departments or agencies of other states that have established a setoff procedure.

6. *Fees.* The department shall establish fees for use of the setoff system to be paid by participating public agencies to the department.

Sec. 17. [Section 422.12G, subsection 2](#), Code 2020, is amended to read as follows:

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the veterans trust fund and to the volunteer fire fighter preparedness fund as one checkoff on the tax return. The department of revenue, on or before January 31, shall transfer one-half of the total amount designated on the tax return forms due in the preceding calendar year to the veterans trust fund and the remaining one-half to the volunteer fire fighter preparedness fund. However, before a checkoff pursuant to [this section](#) shall be permitted, all liabilities on the books of the department of ~~administrative services~~ and accounts identified as owing under [section 8A.504 421.65](#) shall be satisfied.

Sec. 18. [Section 422.12I, subsection 2](#), Code 2020, is amended to read as follows:

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the foundation fund on the tax return. The department, on or before January 31, shall transfer the total amount designated on the tax form due in the preceding year to the foundation fund. However, before a checkoff pursuant to [this section](#) shall be permitted, all liabilities on the books of the department of ~~administrative services~~ and accounts identified as owing under [section 8A.504 421.65](#) shall be satisfied.

Sec. 19. [Section 422.12K, subsection 2](#), Code 2020, is amended to read as follows:

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the child abuse prevention program fund on the tax return. The department of revenue, on or before January 31, shall transfer the total amount designated on the tax return forms due in the preceding calendar year to the child abuse prevention program fund. However, before a checkoff pursuant to [this section](#) shall be permitted, all liabilities on the books of the department of ~~administrative services~~ and accounts identified as owing under [section 8A.504 421.65](#) shall be satisfied.

Sec. 20. [Section 422.20, subsection 3](#), paragraph a, Code 2020, is amended to read as follows:

a. Unless otherwise expressly permitted by ~~section 8A.504~~, [section 8G.4](#), [section 11.41](#), [section 96.11, subsection 6](#), [section 421.17, subsections 22, 23, and 26](#), [section 421.17, subsection 27, paragraph “k”](#), [section 421.17, subsection 31](#), [section 252B.9](#), [section 321.40, subsection 6](#), [sections 321.120, 421.19, 421.28, 421.65, 422.72, and 452A.63](#), [this section](#), or another provision of law, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

Sec. 21. [Section 422.72, subsection 3](#), paragraph a, Code 2020, is amended to read as follows:

a. Unless otherwise expressly permitted by ~~section 8A.504~~, [section 8G.4](#), [section 11.41](#), [section 96.11, subsection 6](#), [section 421.17, subsections 22, 23, and 26](#), [section 421.17, subsection 27, paragraph “k”](#), [section 421.17, subsection 31](#), [section 252B.9](#), [section 321.40, subsection 6](#), [sections 321.120, 421.19, 421.28, 421.65, 422.20, and 452A.63](#), [this section](#), or another provision of law, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

Sec. 22. [Section 456A.16, subsection 7](#), Code 2020, is amended to read as follows:

7. The department shall adopt rules pursuant to [chapter 17A](#) to implement [this section](#). However, before a checkoff pursuant to [this section](#) shall be permitted, all liabilities on the books of the department of ~~administrative services~~ revenue and accounts identified as owing under [section 8A.504 421.65](#) shall be satisfied.

Sec. 23. [Section 602.8102, subsection 58A](#), Code 2020, is amended to read as follows:

58A. Assist the department of administrative services revenue in setting off against debtors' income tax refunds or rebates under [section 8A.504 421.65](#), debts which are due, owing, and payable to the clerk of the district court as criminal fines, civil penalties, surcharges, or court costs.

Sec. 24. [Section 602.8107, subsection 4](#), paragraph a, Code 2020, is amended to read as follows:

a. [This subsection](#) does not apply to amounts collected for victim restitution, the victim compensation fund, the criminal penalty surcharge, sex offender civil penalty, drug abuse resistance education surcharge, the law enforcement initiative surcharge, county enforcement surcharge, amounts collected as a result of procedures initiated under [subsection 5](#) or under [section 8A.504 421.65](#), or fees charged pursuant to [section 356.7](#).

Sec. 25. [Section 642.2, subsection 4](#), Code 2020, is amended to read as follows:

4. Notwithstanding [subsections 2, 3, 6, and 7](#), any moneys owed to the child support obligor by the state, with the exception of unclaimed property held by the treasurer of state pursuant to [chapter 556](#), and payments owed to the child support obligor through the Iowa public employees' retirement system are subject to garnishment, attachment, execution, or assignment by the child support recovery unit if the child support recovery unit is providing enforcement services pursuant to [chapter 252B](#). Any moneys that are determined payable by the treasurer pursuant to [section 556.20, subsection 2](#), to the child support obligor shall be subject to setoff pursuant to [section 8A.504 421.65](#), notwithstanding any administrative rule pertaining to the child support recovery unit limiting the amount of the offset.

Sec. 26. REPEAL. [Section 8A.504](#), Code 2020, is repealed.

Sec. 27. TRANSITION PROVISIONS. Any rule, regulation, form, order, or directive promulgated by the department of administrative services as required to administer and enforce the provisions of [section 8A.504](#) prior to the effective date of this Act shall continue in full force and effect until amended, repealed, or supplemented by the department of revenue.

Sec. 28. EFFECTIVE DATE. This Act takes effect January 1, 2021.

Approved June 17, 2020